Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Schools and Libraries Universal Support Mechanism	CC Docket No. 02-6

COMMENTS OF VERIZON

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I. INTRODUCTION AND SUMMARY

Verizon fully supports the Commission's efforts to combat waste, fraud, and abuse in the E-rate program and agrees that many of the changes proposed in the Public Notice[2] regarding E-rate forms 472, 473, and 474 will improve oversight of the program. In some cases, however, the proposed revisions to these forms are not supported by the Commission's rules, are not clear, or would needlessly add complexity and inefficiency to the program. Therefore, the Commission should revise the proposed forms as described below.

II. THE FCC MUST NOT ADD THE WHISTLEBLOWER CERTIFICATION BECAUSE IT HAS NO BASIS IN THE FCC'S RULES

In both Form 472, the Billed Entity Applicant Reimbursement Form, and Form 473, the Service Provider Annual Certification Form, the Universal Service Administrative Company ("USAC") proposes to require service providers, among other things, to "be informed" of

[1] A list of the Verizon telephone companies is provided at Attachment A.

[2] *Wireline Competition Bureau Seeks Comment on Proposed Revisions to FCC Forms 472, 473 and 474*, Public Notice, DA 05-513 (rel. Mar. 1, 2005) ("Public Notice").

program violations and to report any violations to USAC.[3] The Commission should not include the certification because there is no Commission rule to support it.

In particular, there is no basis for requiring service providers to identify Applicants' violations. It is sufficient that Applicants make their own certifications regarding program violations because Applicants are the best source for such information. Imposing liability on an innocent service provider if it does not engage in whistle blowing is fraught with difficulties and should not be adopted.

In addition, it would be procedurally improper to adopt a requirement that service providers be whistleblowers for the program. The Administrative Procedure Act ("APA") requires that substantive rule changes be considered and approved by the full Commission after public notice and comment. 5 U.S.C. § 553.[4] In the Fifth Report and Order, the Commission, after notice and comment, revised its rules to provide a legal basis for certifications on several E-rate forms.[5] However, the Commission neither sought public comment on nor adopted a rule requiring service providers to report violations to USAC. Moreover, the whistleblower requirement created by USAC is not a minor administrative change. Because the requirement potentially creates liability for failure to engage in whistle blowing, it is a substantive change to

[3] Certification E in Block 4 of Form 472 states "I acknowledge the FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or the applicant listed in this Form 472, or any person associated in any way with me or the applicant, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism." Certification 15 on Form 473 uses similar language.

[4] *United States Telecom Ass'n v. FCC*, 2005 U.S. App. LEXIS 4058 (D.C. Cir. 2005) ("[N]ew rules *that work substantive changes* … are subject to the APA's procedures.") (emphasis in original) (citing *Sprint Corp. v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003)).

[5] *Schools and Libraries Universal Support Mechanism*, Fifth Report and Order, 19 FCC Rcd 15808 (2004) ("Fifth Report and Order").

the Commission's rules. Therefore, the certification should not be included in either Form 472 or Form 473.

If, however, the Commission were to adopt a whistleblower requirement in this proceeding, it should at a minimum specify the type of due diligence required of service providers. For example, it could be reasonable to require service providers to certify that, at the time of the certification, they do not knowingly directly employ any person or company working on an E-rate project that appears on the publicly available list, posted on the USAC website, of persons or entities suspended and debarred from the schools and libraries program.[6]

Regardless of whether the Commission decides to adopt a whistleblower requirement, the Commission should not include the requirement in Form 472 (Block 4, Certification E) because that form is primarily for Applicants. Requiring service providers to attest to this certification on an applicant form would be unnecessary and delay and complicate the completion of the application. Form 473, the Service Provider Annual Certification Form, would be a more appropriate place to obtain this kind of certification subject to the modifications suggested above.

III. THE FCC SHOULD NOT ADOPT CERTIFICATIONS THAT ARE AT ODDS WITH OTHER RULES, ARE UNNECESSARY, OR THAT WOULD PROHIBIT OTHERWISE LAWFUL CONDUCT

Several of the proposed certifications on Form 473 should be modified because they are inconsistent with service providers' obligations under FCC rules, are unnecessary, or because they contain broad language that could expose service providers to liability for conduct that is otherwise consistent with federal and state law.

[6] Universal Service Administrative Company, *List of Persons Suspended or Debarred from the Schools and Libraries Support Mechanism*, *at* http://www.sl.universalservice.org/suspensions/suspensions.asp (content last modified March 9, 2005).

Certification 17: This certification concerns the rates charged by the service provider.[7] It states in relevant part that the service provider's rates are "its lowest and are competitive with the rates generally paid for similar services and equipment in the local community." This language is inconsistent with the Commission's rules. The Commission's rules require that service providers offer the "lowest corresponding price," 47 C.F.R. § 54.504(e), which means "the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services." 47 C.F.R. § 54.500(f). The Commission should change the language to conform to the Commission's rules so that there is no ambiguity regarding service providers' obligations.

Certifications 18 and 20: Certifications 18 and 20 are intended to avoid anticompetitive bid collusion.[8] These certifications are unnecessary in many states, which already have laws that prohibit anticompetitive bidding practices such as bid rigging, the subject of the certifications here. If a certification in those states is required at all, the Commission should instead require service providers to certify that "the service provider will comply with state bidding laws, where applicable."

Even where state bidding laws do not govern a particular bid, however, certain revisions to the certifications are needed because the overbroad language in those certifications could

[7] Certification 17 states, "I certify that the rates charged by the service provider listed on this Form 473 for goods and services provided pursuant to the program are its lowest and are competitive with the rates generally paid for similar services and equipment in the local community."

[8] Certification 18 states, " I certify that the prices in any offer this service provider makes pursuant to the program have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered.

Certification 20 states, "I certify that no attempt will be made by this service provider to induce any other concern to submit or not to submit an offer for the purpose of restricting competition."

needlessly prevent service providers from entering into routine and beneficial partnerships and subcontracting arrangements with other companies. Consequently, the Commission should add a sentence to the certification stating that "Service providers may enter into partnering and subcontracting arrangements with other companies provided that the arrangements are lawful." Also, in the instructions for Certifications 18 and 20, the Commission should provide examples of permitted partnering and subcontracting arrangements such as joint ventures or partnerships with equipment vendors to clarify the import of this certification.

Certification 12: Service providers are required to certify that they will not provide rewards "of any type" to any applicant in return for being selected to provide service.[9] This certification is ambiguous and overbroad since it could be read to prohibit lawful conduct. This certification should be revised to exclude "items of *de minimus* value provided to applicants that are not connected with a particular bid and are otherwise lawful to provide." Because these items of *de minimus* value, such as hats, T-shirts, and mugs, are promotional in nature and distributed widely, excluding such items from the certification should not raise any concerns.[10]

Certification 19: The language of this certification appears to prohibit the disclosure of any prices even though competitors may learn about a service provider's prices simply by reviewing marketplace information that in some cases is easily obtainable.[11] For example,

[9] Certification 12 states, " The service provider listed in this Form 473 will not provide a reward of any type to any applicant in return for the selection of this service provider to provide these goods and services. The service provider listed in this form will not provide any kickbacks or paid commission to any recipient entity(ies) in connection with the receipt or maintenance of any of the services or equipment.

[10] For example, Verizon's Code of Conduct approves, in most cases, of gifts that are "promotional in nature and distributed widely."

[11] Certification 19 states, "I certify that the prices in any offer that this service provider makes pursuant to the program will not be knowingly disclosed by this service provider, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid

competitors could learn such information through standard prices given to other customers, price lists and tariffs posted on a service provider's website,[12] the service provider's advertisements, news stories about the service provider's offerings, or discussions with other customers. To avoid unnecessary confusion regarding the information that service providers may reveal, the Commission should add, "This certification does not prohibit disclosure of generally available information, such as publicly obtainable price quotes and rates, or permissively filed tariffs and price lists."

IV. THE FCC SHOULD REVISE OTHER CERTIFICATIONS THAT ARE AMBIGUOUS OR WOULD CREATE INEFFICIENCIES

Several of the certifications in the revised Forms 472 and 473 proposed by USAC to improve program administration are counterproductive because the certifications are not clear or would add needless complexity to the program. Accordingly, the FCC should adopt the following modifications.

Certification C in Block 4 of Form 472: Service providers must certify that they will remit payment to the "Billed Entity" named in Block 1 of Form 472.[13] However, payments by service providers are sometimes made to a designee of the billed entity — not the billed entity itself — in accordance with information provided on other applicant records such as the Form 472 Remittance Statement and Billed Entity Applicant Reimbursement Letter. To avoid

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solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law."

[12] Because not all tariffs filed by service providers are "required by law," the certification could be read to prohibit the disclosure of permissively filed tariffs.

[13] Certification C states "My company will remit payment of the approved discount amount to the Billed Entity prior to tendering or making use of the payment, issued by USAC to the service provider, of the approved discounts for this Form 472."

needless disruptions to participants' billing arrangements, the Commission should add "or its designee" after "Billed Entity."

Certification F in Block 4 of Form 472: This certification concerns, among other things, service providers' obligations to retain records associated with the bidding process and service providers' delivery of services.[14] Because Form 472 is primarily for Applicants and does not concern the bidding process or the delivery of services, the certification is irrelevant and should be deleted. It is sufficient that service providers make this certification on Form 473 (at Certification 16).

Proposed date on Form 472: The draft date on Form 472 is "July 2005." To avoid confusion, the Commission should clarify that Applicants and service providers may use Form 472 on a going forward basis, beginning in Funding Year 2005.

Certification 9 in Block 2 of Form 473: Although this certification concerns service providers' familiarity with the "terms, conditions, and purposes" of the program, the draft language makes the signatory responsible for the service provider's knowledge.[15] Therefore, the Commission should revise the certification to state, "I certify to the best of my knowledge, information, and belief that the service provider listed is fully familiar … ."

Certification 10 in Block 2 of Form 473: This certification, which concerns the invoices submitted to USAC by service providers, states in part that "FCC Forms 474 submitted to USAC shall exclude any charges previously invoiced to USAC for which USAC has not yet issued a

[14] Certification F states, "I certify that all documents necessary to demonstrate compliance with the statute and FCC rules regarding the certifications on this form, the bidding process for services delivered, and the delivery of services receiving schools and libraries discounts listed on this Form 472 will be retained for a period of five years after the last day of service delivered. I recognize that I may be audited pursuant to participation in the schools and libraries program."

[15] Certification 9 states, "The service provider listed is fully familiar with the terms, conditions, and purposes of the Schools and Libraries Universal Support Mechanism (hereinafter "program")."

reimbursement decision."[16] The Commission should substitute "not knowingly include" for "exclude" because, on occasion, service providers may accidentally send duplicate invoices to USAC. This change is necessary so that service providers would not be liable for such innocent mistakes, which service providers quickly correct when the error is discovered.

Certification 14 in Block 2 of Form 473: Although this certification concerns service providers' compliance with the program rules, the draft language limits the certification to the signatory rather than the service provider.[17] It begins, "I have complied and will comply with all applicable program rules … ." Therefore, the Commission should revise this language to read, "I certify to the best of my knowledge, information, and belief that the service provider has complied and will comply with all applicable program rules … ."

V. THE FCC SHOULD NOT ADOPT FORM CHANGES THAT WOULD REQUIRE UNNECESSARY AND COSTLY CHANGES TO SERVICE PROVIDERS' BILLING SYSTEMS

The Commission should only modify Form 474, the Service Provider Invoice Form, in ways that do not result in significant and costly changes to service providers' billing systems. Specifically, the Commission should retain the current system for reporting recurring services and should clarify that service providers may report recurring charges and the non-recurring charges associated with the recurring services together in a single line item.

[16] Certification 10 states, "FCC Forms 474 that are submitted to USAC by the service provider will contain requests for support ONLY 1) for goods and services identified by each applicant as approved by USAC and 2) for which the goods and services have been provided to applicant(s) and/or entity(ies) pursuant to the FRNs indicated on the invoices unless a contract between the entity(ies) and service provider allows for payment prior to the delivery of service or installation of equipment. FCC Forms 474 submitted to USAC shall exclude any charges previously invoiced to USAC for which USAC has not yet issued a reimbursement decision. The service provider listed in this Form 473 will not knowingly or intentionally submit invoices to USAC that contain requests for support for ineligible services."

[17] Certification 14 states, "I have complied and will comply with all applicable program rules when invoices are submitted and acknowledge that failure to do so may result in the cancellation of funding requests, the repayment of refunds to USAC, and referral to appropriate authorities for possible law enforcement action."

Column 11: Column 11, which concerns recurring services, currently requests the "customer billed date" for each line item. USAC proposes to require service providers to indicate the "first month of the reimbursement period covered by each line" (*i.e.*, the first month eligible for a discount). Given the inevitable delays in the reimbursement process, however, it makes more sense for service providers to list the customer billed date.

Delays occur at three stages in the process, through no fault of the participants: (1) while the Schools and Libraries Division ("SLD") prepares and issues the Funding Commitment Decision Letters; (2) while the service provider awaits an Applicant's submission and SLD's approval of the Form 486 ("Receipt of Service Confirmation Form"); and (3) while the service provider calculates the discounts in arrears to the approved service start date as noted on the Receipt of Service Confirmation Form. Thus, it is not unusual for a service provided in July, for example, to be discounted for the first time on a bill at the end of the year — or even in the following year — along with the discounts for the subsequent months. During its invoice review, should USAC require service providers to submit supporting documentation, the bill that first contains the discount would provide the desired information. In short, the customer billed date provides a more complete and accurate picture of the reimbursement process; therefore, the Commission should not change Column 11 on the current Form 474.

Column 13: Column 13 requests the total charge per FRN ("Funding Request Number"). The Commission should clarify that service providers may include a non-recurring charge associated with a monthly recurring service in a single line item together with the recurring charge for the FRN listed. Form 474 contains separate columns for recording recurring services (Column 11) and non-recurring services (Column 12), which could imply that non-recurring charges and recurring charges also should be separately recorded. Nonetheless, the SLD has

always allowed service providers to include both the recurring charge and the associated non-recurring charge for a particular FRN together in Column 13 because it is too difficult to separate these two types of charges.

The current procedure reflects the way services are currently billed to Applicants and Verizon's invoicing and billing system is set up this way. It would be costly and disruptive to completely change this practice at this stage. Indeed, in order to change its billing systems, Verizon would at a minimum first need to define and write the requirements for each system, then each change would need to be coded, then each of the changes would need to be tested to ensure that customers are properly billed. Also, there is no reason to change the practice because it does not impair program administration. While Verizon seeks to combine associated charges, it will continue to separately record charges for non-recurring products and services that are not associated with recurring services, *e.g.*, the one-time charge associated with the cost of a PBX or router. Therefore, the Commission should include in the instructions for Column 13 a statement that explicitly permits the long-standing practice of combining associated charges for a specific FRN.

VI. CONCLUSION

The Commission should adopt the revised E-rate forms 472, 473, and 474, but with the modifications described herein.

Respectfully submitted,

/s/ Gregory J. Vogt

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ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.